Message

From: Conrad, Daniel [conrad.daniel@epa.gov]

Sent: 1/28/2021 9:35:50 PM

To: Simons, Andrew [Simons.Andrew@epa.gov]

Subject: RE: Court decision on EPA 'secret science' rule

Ok just verifying as I didn't think I'd seen it previously, it's this:

Ex. 5 AC/AWP/DP

That would be in addition to this that we discussed:

Ex. 5 AC/AWP/DP

Daniel H. Conrad Acting Associate Deputy General Counsel U.S. Environmental Protection Agency Office of General Counsel Office: (202) 564-0903 Cell: (202) 507-2946

CONFIDENTIALITY NOTICE: This message may contain deliberative, attorney-client, or otherwise privileged material. Do not release this message under FOLA without appropriate review. If you are not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, please contact the sender and delete all copies.

From: Simons, Andrew <Simons.Andrew@epa.gov>

Sent: Thursday, January 28, 2021 4:34 PM **To:** Conrad, Daniel <conrad.daniel@epa.gov>

Subject: RE: Court decision on EPA 'secret science' rule

Ex. 5 AC/AWP/DP

Andrew Simons
Acting Associate General Counsel
Cross-Cutting Issues Law Office
U.S. Environmental Protection Agency
Tel. 202-564-3649
WJC-N 7526E

CONFIDENTIALITY NOTICE: This message may contain deliberative, attorney-client, or otherwise privileged material. Do not release this message under FOLA without appropriate review. If you are not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, please contact the sender and delete all copies.



Please consider the environment before printing this email.

From: Conrad, Daniel < conrad.daniel@epa.gov Sent: Thursday, January 28, 2021 4:26 PM To: Simons, Andrew < simons.andrew@epa.gov

Subject: FW: Court decision on EPA 'secret science' rule

Ex. 5 AC/AWP/DP

Daniel H. Conrad Acting Associate Deputy General Counsel U.S. Environmental Protection Agency Office of General Counsel Office: (202) 564-0903 Cell: (202) 507-2946

CONFIDENTIALITY NOTICE: This message may contain deliberative, attorney-client, or otherwise privileged material. Do not release this message under FOLA without appropriate review. If you are not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, please contact the sender and delete all copies.

From: Sullivan, Melissa <<u>sullivan.melissa@epa.gov</u>>

Sent: Thursday, January 28, 2021 4:25 PM

To: Fitzpatrick, Kacey < Fitzpatrick.Kacey@epa.gov >; Conrad, Daniel < conrad.daniel@epa.gov > Cc: Hubbard, Carolyn < Hubbard.Carolyn@epa.gov >; Vasko, Jacqueline < Vasko.Jacqueline@epa.gov >

Subject: RE: Court decision on EPA 'secret science' rule

Thank you.

Melissa A. Sullivan
Office of Public Affairs
U.S. Environmental Protection Agency
202 913-3840
Sullivan.Melissa@epa.gov

From: Fitzpatrick, Kacey < Fitzpatrick.Kacey@epa.gov>

Sent: Thursday, January 28, 2021 4:24 PM

To: Sullivan, Melissa < sullivan, Melissa < sullivan, Melissa < sullivan, Melissa < sullivan.melissa@epa.gov>; Conrad, Daniel < conrad.daniel@epa.gov>

Cc: Hubbard, Carolyn < Hubbard.Carolyn@epa.gov>; Vasko, Jacqueline < Vasko.Jacqueline@epa.gov>

Subject: RE: Court decision on EPA 'secret science' rule

Here's an approved quote from Jennifer:

EPA's Scientific Integrity Policy and its implementation make up one of the most comprehensive and robust scientific integrity programs across the federal government. It is essential that the environmental policies, decisions, guidance, and regulations that impact the lives of Americans are informed by the best available science. EPA will remain committed to ensuring that the Agency rests upon a strong foundation of science," said career scientist Dr. Jennifer Orme-Zavaleta, Acting Assistant Administrator for the Office of Research and Development and the agency's Acting Science Advisor.

Kacey Fitzpatrick

Science Communication
Office of Research and Development
U.S. Environmental Protection Agency

Office: 202-564-4086 Cell: 202-701-8634 From: Sullivan, Melissa <sullivan.melissa@epa.gov>

Sent: Thursday, January 28, 2021 3:05 PM

To: Conrad, Daniel <<u>conrad.daniel@epa.gov</u>>; Fitzpatrick, Kacey <<u>Fitzpatrick.Kacey@epa.gov</u>> **Cc:** Hubbard, Carolyn <<u>Hubbard.Carolyn@epa.gov</u>>; Vasko, Jacqueline <<u>Vasko.Jacqueline@epa.gov</u>>

Subject: RE: Court decision on EPA 'secret science' rule

ORD-

While OGC is confirming their portion of the response, earlier today Lindsay suggested including a quote from Jennifer or another career scientist to underscore the administration's commitment to scientific integrity.

Was that idea floated during ORD deliberation? If not, can it be included in your proposed response?

Thank you, Melissa

Melissa A. Sullivan
Office of Public Affairs
U.S. Environmental Protection Agency
202 913-3840
Sullivan.Melissa@epa.gov

From: Sullivan, Melissa

Sent: Thursday, January 28, 2021 1:18 PM

To: Conrad, Daniel <<u>conrad.daniel@epa.gov</u>>; Fitzpatrick, Kacey <<u>Fitzpatrick.Kacey@epa.gov</u>> **Cc:** Hubbard, Carolyn <<u>Hubbard.Carolyn@epa.gov</u>>; Vasko, Jacqueline <<u>Vasko.Jacqueline@epa.gov</u>>

Subject: RE: Court decision on EPA 'secret science' rule

Great, thank you.

Melissa A. Sullivan
Office of Public Affairs
U.S. Environmental Protection Agency
202 913-3840
Sullivan.Melissa@epa.gov

From: Conrad, Daniel <<u>conrad.daniel@epa.gov</u>> Sent: Thursday, January 28, 2021 1:15 PM

To: Sullivan, Melissa <<u>sullivan.melissa@epa.gov</u>>; Fitzpatrick, Kacey <<u>Fitzpatrick.Kacey@epa.gov</u>> **Cc:** Hubbard, Carolyn <Hubbard.Carolyn@epa.gov>; Vasko, Jacqueline <Vasko.Jacqueline@epa.gov>

Subject: RE: Court decision on EPA 'secret science' rule

I'm checking in with folks, we wouldn't use the pending litigation language for a decision, but likely simply adding "EPA is reviewing the decision." To the beginning or end of what ORD provided. I'll confirm once I hear back.

-Dan

Daniel H. Conrad Acting Associate Deputy General Counsel U.S. Environmental Protection Agency Office of General Counsel Office: (202) 564-0903 Cell: (202) 507-2946

ED_014142_00000766-00003

CONFIDENTIALITY NOTICE: This message may contain deliberative, attorney-client, or otherwise privileged material. Do not release this message under FOLA without appropriate review. If you are not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, please contact the sender and delete all copies.

From: Sullivan, Melissa <sullivan.melissa@epa.gov>

Sent: Thursday, January 28, 2021 12:18 PM

To: Fitzpatrick, Kacey < Fitzpatrick. Kacey@epa.gov >; Conrad, Daniel < conrad.daniel@epa.gov > Cc: Hubbard, Carolyn < Hubbard. Carolyn@epa.gov>; Vasko, Jacqueline < Vasko. Jacqueline@epa.gov>

Subject: RE: Court decision on EPA 'secret science' rule

Daniel-

In addition to what Kacey provided, can you confirm the below applies or does OGC recommend using different language?

Ex. 5 Deliberative Process (DP)

EPA spokesperson

Melissa A. Sullivan Office of Public Affairs U.S. Environmental Protection Agency 202 913-3840 Sullivan.Melissa@epa.gov

From: Fitzpatrick, Kacey <Fitzpatrick.Kacey@epa.gov>

Sent: Thursday, January 28, 2021 12:13 PM

To: Sullivan, Melissa <sullivan.melissa@epa.gov>; Conrad, Daniel <conrad.daniel@epa.gov>

Cc: Hubbard, Carolyn < Hubbard. Carolyn@epa.gov>; Vasko, Jacqueline < Vasko. Jacqueline@epa.gov>

Subject: RE: Court decision on EPA 'secret science' rule

Hi Melissa,

Here's is ORD's part of the statement. Carolyn and Jennifer approved. Can OGC weigh in on the first part? Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Ex. 5 Deliberative Process (DP)

Kacey Fitzpatrick

Science Communication Office of Research and Development U.S. Environmental Protection Agency

Office: 202-564-4086 Cell: Ex. 6 Personal Privacy (PP)

From: Sullivan, Melissa <sullivan.melissa@epa.gov>

Sent: Thursday, January 28, 2021 10:07 AM

To: Conrad, Daniel <<u>conrad.daniel@epa.gov</u>>; Hubbard, Carolyn <<u>Hubbard.Carolyn@epa.gov</u>>; Fitzpatrick, Kacey <<u>Fitzpatrick.Kacey@epa.gov</u>>; Vasko, Jacqueline <<u>Vasko.Jacqueline@epa.gov</u>> Subject: Fwd: Court decision on EPA 'secret science' rule Good morning, We have received a few inquiries about the ruling. Do you all have a statement on this? Thank you, Melissa Begin forwarded message: From: Rachel Frazin <rfrazin@thehill.com> **Date:** January 28, 2021 at 9:17:56 AM EST To: Press < Press@epa.gov> Subject: Court decision on EPA 'secret science' rule Hi everyone, Does the EPA want to comment on this court ruling? Best, Rachel Frazin Energy and Environment Reporter, The Hill 561-212-2815 ----- Forwarded message ------From: Sharyn Stein < sstein@edf.org> Date: Wed, Jan 27, 2021 at 10:27 PM Subject: Court Rules Trump Administration's Censored Science Rule Was Issued Unlawfully To: <rfrazin@thehill.com>



NEWS RELEASE

Contact:

Sharyn Stein, 202-905-5718, sstein@edf.org

Court Rules Trump Administration's Censored Science Rule Was Issued Unlawfully

(Great Falls, MT – January 27, 2021) A federal district court ruled today that the Trump administration was wrong to issue its Censored Science Rule without following proper procedures, and said that its decision also "casts into significant doubt" whether the rule has any legal basis at all.

The <u>U.S. District Court for the District of Montana's decision</u> increases the odds that the harmful and highly controversial rule won't survive lawsuits opposing it, and opens the door for EPA to suspend the rule until the courts finish hearing those lawsuits.

"The Trump administration broke the law by issuing a harmful rule to censor life-saving medical science, and broke the law again by trying to make the rule immediately effective," said EDF senior attorney Ben Levitan. "The Censored Science Rule weakens EPA's ability to protect Americans from dangerous pollution, toxic chemicals and other threats. Today's ruling delays the rule's effective date, and also undercuts the legal basis for issuing the rule at all. We'll also keep fighting to get this rule off the books for good."

"This is a great day for science and public health. It's a relief to have a court agree that the previous administration acted illegally in its parting shot at science and basic public health protections. We can all breathe easier. Literally," said Anne Hedges, director of policy and legislative affairs for the Montana Environmental Information Center.

The ruling came on the same day that President Biden <u>issued a memorandum</u> saying that it will be the "policy of my Administration to make evidence-based decisions guided by the best available science and data."

Trump EPA Administrator Andrew Wheeler rushed the Censored Science rule to the finish line just days before leaving office. The rule would undermine the agency's ability to protect public health and the environment by fundamentally transforming the ways in which EPA may consider scientific evidence. It would restrict EPA's ability to use rigorous, peer-reviewed medical research for which underlying data are not publicly available — even when legal and ethical rules, like medical privacy laws, would prohibit making that data public.

Wheeler tried to make the Censored Science Rule effective immediately upon its publication in the Federal Register. However, the law clearly requires that substantive rules have an effective date of "not less than 30 days" after publication. If Wheeler had followed the proper protocols, the rule would not yet have been effective when the Biden EPA took over. Wheeler's end run around the proper procedures was an effort to tie the hands of the incoming administration.

EDF, the Montana Environmental Information Center, and Citizens for Clean Energy filed a lawsuit with the U.S. District Court for the District of Montana challenging Wheeler's undue haste. The groups also argued that rule was "substantive" even though it was issued under a statute that cannot be used for substantive rules.

Today the court granted the groups' motion for summary judgment, and sent a strong signal that it is inclined to find the rule unlawful on the merits, saying:

"The Court's above determination that the Final Rule represented a substantive rule rather than procedural rule casts into significant doubt whether EPA retains any legal basis to promulgate the Final Rule." (<u>Decision</u>, page 30)

Today's decision also allows the groups to petition the Biden EPA to stay the rule during the rest of the litigation.

###

One of the world's leading international nonprofit organizations, **Environmental Defense Fund** (<u>edf.org</u>) creates transformational solutions to the most serious environmental problems. To do so, EDF links science, economics, law, and innovative private-sector partnerships. With more

than 2.5 million members and offices in the United States, China, Mexico and the European Union, EDF's scientists, economists, attorneys and policy experts are working in 23 countries and across the E.U. to turn our solutions into action. Connect with us on Twitter @EnvDefenseFund

If you would rather not receive future communications from Environmental Defense Fund, let us know by clicking <u>here.</u> Environmental Defense Fund, 257 Park Avenue South, New York, NY 10010 United States